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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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BY:

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND ROBINSON,

Plaintiff,

vs.

DAVID RUBIN and BRIAN CORNELL,

Defendants.

Case No.: '08 CV 0244 DMS (BLM)

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT BRIAN CORNELL'S  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT, MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT.**

May 2, 2008 10:30 a.m. Courtroom 10  
Hon. Dana M. Sabraw, District Judge

Plaintiff opposes as follows:

Neither of Defendant Cornell's two arguments for dismissal have merit because  
(1) Plaintiff's failure to specifically name the constitutional amendment under which the  
deprivation of right is alleged, is insubstantial, and (2) the sufficiency of the Complaint is  
not diminished merely because Plaintiff alleged state violations in support of the federal  
one.

Dated: 4-1-08

*Ray Robinson*

Raymond Robinson

Plaintiff, in pro per

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF OPPOSITION**

**I**

Plaintiff's failure to formally name the specific constitutional amendment  
under which the claim is brought is insubstantial.

Defendant's first of two arguments for dismissal of Plaintiff's Complaint is seen on page 3 of the moving papers, lines 4-17.

Here Defendant suggests that the law requires the complaint to identify the constitutional amendment involved in the claim, but the closest that Defendant can get to supporting such a suggestion is a quotation from case law that says:

"The first inquiry in any (section) 1983 suit" (is) "to isolate the precise constitutional violation with which (the defendant) is charged" [Id., lines 11-12].

Looking to the Complaint, the precise constitutional violation is isolated in paragraph 8. It says, "...deprived...of...right to due process..."

Plaintiff does not see where the law requires the complaint to identify or specifically name the amendment under which the alleged violation occurred.

Further, Defendant Cornell has clearly been given fair notice by way of the Complaint to know what the action is about.

For the record, "due process" refers to the Due Process Clause (Section 1) of the Fourteenth Amendment to the U.S. Constitution.

Defendant's argument does not seem convincing, but Plaintiff will of course amend if the Court sees otherwise.

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1 II

2 The Complaint is not defective merely because it alleges  
3 that Defendant Cornell violated state criminal law.

4 Defendant's final argument for dismissal of the Complaint begins on page 3, line 18 of  
5 the moving papers, and is based upon a theory that Plaintiff is asserting claims for relief  
6 under state criminal statutes.

7 Defendant Cornell's reasoning seems misplaced. The relief requested under  
8 section 1983 is necessarily from conduct of state actors violating federal rights.  
9 That some of the allegation in the Complaint includes that the state actors  
10 violated state law while violating federal rights, is not only harmless but is  
11 superfluous to the sufficiency of the Complaint in general.

12 In addition, Plaintiff points out that it is proper for a federal court to  
13 take judicial notice of the laws of the States in which it sits  
14 [*Blackburn v. Fisk University*, 443 F.2d 121 (1971)].

15 The Complaint seeks no relief for any violations of criminal statutes.

16 III

17 Plaintiff objects to Defendant Cornell's choice of representation.

18 The Complaint alleges facts that may be sufficient to arrive at probable cause for one  
19 or more misdemeanor violations by this Defendant. The City Attorney is the agency in  
20 this town that prosecutes misdemeanors, yet the City Attorney is hereby defending this  
21 Defendant against the very allegations constituting said probable cause. This conflict of

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4 interest must not be sustained, and Plaintiff requests a ruling on this issue.

5 Conclusion:

6 Defendant Cornell's arguments do not appear to affect the sufficiency of Plaintiff's  
7 Complaint. Plaintiff therefore requests this Motion be denied on its merits or, in the  
8 alternative, that it be denied on the basis of said conflict of interest.

9 Dated: 4-1-08

Respectfully,

10 Ray Robinson

11 Raymond Robinson

12 Plaintiff, in pro per

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